

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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**WILLIAM MERRILL,**

**Plaintiff,**

**-v-**

**11-CV-0720A(Sr)**

**SGT. MIKE SCHELL and**

**CHRIS FELICE,**

**Defendants.**

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**DECISION AND ORDER**

This case was referred to the undersigned by the Hon. Richard J. Arcara, pursuant to 28 U.S.C. § 636(b)(1), for all pretrial matters and to hear and report upon dispositive motions. Dkt. #8.

Plaintiff commenced this action, *pro se*, pursuant to 42 U.S.C. § 1983, in the Northern District of New York. Dkt. #1. Following transfer of the action to this district, plaintiff amended his complaint and was allowed to proceed on a single claim of excessive force based upon allegations that on December 11, 2008, Chris Felice held plaintiff in Felice's police vehicle until Sgt. Schell arrived and that upon his arrival, Sgt. Schell put his pistol in plaintiff's face and told him to pay child support and to drop the court case seeking custody of his child. Dkt. #11.

Currently before the Court is plaintiff's motion to compel (Dkt. #22); motion for sanctions (Dkt. #23); motion for the issuance of subpoenas (Dkt. #26); and motion

for sanctions (Dkt. #29), all of which address the same underlying discovery requests set forth below.

### **Documents relating to June 2009**

Plaintiff complains that he has not received all documents relating to his false arrest by Sgt. Schell in June of 2009. Dkt. #26 & 29. Specifically, plaintiff seeks a statement written and signed by Sgt. Schell falsely accusing the plaintiff of the crime of falsely reporting an incident. Dkt. #29.

In response, defendants deny any “false arrest of plaintiff by defendant in the month of June, 2009,” but provided plaintiff with records relating to plaintiff’s conviction of second degree criminal contempt following charges which also included falsely reporting an incident. Dkt. ##25, 27 & 28.

In light of the fact that the Court denied plaintiff’s motion to amend his complaint to assert a claim of false arrest for filing a false statement on May 21, 2009 (Dkt. #11), plaintiff’s request for production of documents regarding this incident is denied.

### **Telephone Records**

Plaintiff requests telephone records from the Seneca County Sheriff’s Department from November 17, 2008 through May 2009 to demonstrate that defendant Schell telephoned plaintiff’s residence as a form of harassment. Dkt. ##23 & 26.

In response, defendants deny records of any such telephone calls. Dkt. #27. However, defendants provided plaintiff with a copy of the telephone records requested. Dkt. #27, ¶ 8.

Plaintiff replies that the disclosure of the records on compact disk is insufficient because the New York State Department of Corrections and Community Supervision does not permit compact disks in its facilities. Dkt. #29.

In light of the fact that the Court denied plaintiff's motion to amend his complaint to assert a claim of telephone harassment (Dkt. #11), plaintiff's request for production of telephone records is denied.

### **District Attorney's Investigation**

Plaintiff requests documents relating to an investigation by the Seneca County District Attorney's Office regarding the false arrest of plaintiff, harassing telephone calls to plaintiff and Sgt. Schell drawing his weapon and pointing it at plaintiff's face. Dkt. ##23 & 26.

Defendants respond that they have conferred with the Seneca County District Attorney and were advised "that they have no record of the investigation referred to in Plaintiff's demand." Dkt. #27.

As defendants have responded to plaintiff's demand, plaintiff's motions are denied with respect to this request.

**Video**

Plaintiff requests video of Sgt. Schell placing his firearm in plaintiff's face in front of the courthouse of the Seneca County Family Court on December 11, 2008 during the course of plaintiff's arrest. Dkt. #29.

Defendants deny any knowledge of any such video. Dkt. #27.

As defendants have responded to plaintiff's demand, plaintiff's motions are denied with respect to this request.

**Dental Records**

Plaintiff requests dental records from the Seneca County Jail regarding treatment for a broken tooth to demonstrate that plaintiff was assaulted while in custody. Dkt. ##23, 26 & 29.

Defendants respond that plaintiff's dental records are not within their custody and control. Dkt. #27.

Plaintiff concedes that he can obtain his dental records directly from his dentist. Dkt. #29. Accordingly, plaintiff's motions are denied with respect to this request.

### **CONCLUSION**

For the reasons set forth above, plaintiff's motion to compel (Dkt. #22), is denied; plaintiff's motion for sanctions (Dkt. #23), is denied; plaintiff's motion for the issuance of subpoenas (Dkt. #26), is denied; and plaintiff's motion for sanctions (Dkt. #29), is denied.

**SO ORDERED.**

Dated: Buffalo, New York  
October 10, 2013

s/ H. Kenneth Schroeder, Jr.  
**H. KENNETH SCHROEDER, JR.**  
**United States Magistrate Judge**